

REMARKS

Claims 1-21 are presently pending and stand rejected.

Claims 12-17 were "rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention." Office Action (OA), at 2. Applicant has amended claims 12 and 13, and in view of the amendments, it is respectfully submitted that the foregoing rejection is overcome.

Claims 1-18 were "rejected under 35 U.S.C. 102(b) as being anticipated by Mair et al. (US Patent Application Publication no. 2002/0186322 A1)." OA, at 3. However, it appears that Examiner meant to reject claims 1-18 under section (e) of 35 U.S.C. 102 because Examiner quotes this section immediately prior, OA, at 3, Paragraph 4, making the rejection. To the extent that Examiner intended to reject claims 1-18 under 35 U.S.C. 102(b), Assignee respectfully submits that Mair was published on December 12, 2002 (Mair, Cover), after the filing date of the present application, December 27, 2001 and after the priority date of the present application, August 17, 2001, and thus not available as prior art under 35 U.S.C. 102(b).

Assuming that Examiner meant to reject claims 1-18 under 35 U.S.C. 102(e), Assignee notes that Mair was filed on October 15, 2001 and claims priority to provisional application, Serial No. 60/296,924, filed June 8, 2001. "The **35 U.S.C. 102(e)** critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. **119(e)** is the filing date of the provisional application with certain exceptions <if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph>." M.P.E.P. 2136.03 (Emphasis Added).

Assignee respectfully submits that Provisional Patent Application, Serial No. 60/296,924 does not properly "support the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph. With respect to claims 1, 12, 13, and 18, Examiner relies on [0042], lines 4-6, [0033],

lines 7-19, [0035], [0042], and lines 7-16, [0043]. OA, at 3. Provisional Application, Serial No. 60/296,924 does not support the foregoing in compliance with 35 U.S.C. 112, first paragraph. Since the provisional application does not properly support the subject matter relied upon to make the rejection, the 35 U.S.C. 102(e) critical date of Mair should not be the filing date of provisional application 60/296,924, but rather the filing date of the utility, October 15, 2001. Since the present application has a priority date August 17, 2001, Mair is not prior art under 35 U.S.C. 102(e).

Additionally, Examiner rejected claims 19-21 under 35 U.S.C. 103(a)¹, relying on Figs. 3A, 3B, and 5, and paragraphs [0041 to paragraph 0044]. Provisional Application, Serial No. 60/296,924 does not support the foregoing in compliance with 35 U.S.C. 112, first paragraph. Provisional Application, Serial No. 60/296,924 does not support the foregoing in compliance with 35 U.S.C. 112, first paragraph. Since the provisional application does not properly support the subject matter relied upon to make the rejection, the date of Mair should not be the filing date of provisional application 60/296,924, but rather the filing date of the utility, October 15, 2001. Since the present application has a priority date August 17, 2001, Mair is not prior art under 35 U.S.C. 103(a). Accordingly, Assignee respectfully traverses the rejection.

Accordingly, Examiner is requested to withdraw the rejections to claims 1-21.

CONCLUSION


For at least the foregoing reasons, Assignee respectfully submits that each of the pending claims are in a condition for allowance and a notice of allowance is respectfully requested.

¹ Although 35 U.S.C. 103(a) does not set forth what can be used as "prior art", "[p]rior art available under 35 U.S.C. 102 is available under 35 U.S.C. 103." MPEP 2141. While the rejection is made under 35 U.S.C. 103(a), it appears as though Examiner is claiming that Mair is prior art under 35 U.S.C. 102(e).

To the extent that there is any fee associated with any actions requested herein, the Commissioner is requested to charge such fee to Deposit account 13-0017.

RESPECTFULLY SUBMITTED

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